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Twenty-sixth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 461st MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 2 May 2001, at 3 p.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.461/Add.1.

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second periodic report of Georgia (CAT/C/43/Add.1) (continued)

1. At the invitation of the Chairman, the delegation of Georgia took places at the Committee table.

2. Ms. BERIDZE (Georgia) thanked the Committee for their sophisticated questions and obvious understanding of the situation in her country. In reply to Mr. Yakovlev's question about the right of medical practitioners to obtain access to prisoners, she explained that under article 359 of the new Georgian Criminal Code, prisoners were entitled to be examined by an independent forensic expert in order to determine whether they had been ill-treated. Law enforcement officials had sometimes obstructed implementation of that provision. In all such cases, protests from human rights institutions, the mass media or non-governmental organizations (NGOs) had ultimately made it possible for prisoners to be examined, but the delays involved had made it hard to ascertain the nature and cause of injuries. Since it was not clear how prisoners could exercise their right to be examined, her delegation agreed with the Ombudsman's recommendation that legislation should be enacted on that matter and that the Code of Criminal Procedure should be amended to require penal institutions to admit an expert or doctor designated by a prisoner. She added that no complaints that independent experts had been denied access to places of pre-trial detention had been received the previous year.

3. Mr. Mavrommatis had asked whether relatives could call for an examination by an independent expert, whether a visitor who confirmed traces of torture could be heard by the authorities and whether an autopsy would be automatically conducted in the event of a prisoner's death. Under article 359 of the Code of Criminal Procedure, relatives could obtain an expert opinion at their own expense, and a visitor who confirmed the existence of traces of torture could be heard by the courts as a witness. The same article made it obligatory to conduct a post-mortem on a deceased detainee.

4. In response to a point raised by Mr. Rasmussen she said that it was the duty of forensic experts to report any instances of torture, but many cases had been brought to light by the mass media. While investigations had always then been conducted, few of the acts in question had been qualified as torture, probably because the definition of that crime was incomplete. Georgia did have a number of highly qualified medical experts.

5. In reply to questions put by Mr. Yakovlev, she said that investigation of violations of a detained person's rights were subject to judicial review. Under article 73 of the Code of Criminal Procedure, a detained person could file a complaint with the Procurator's Office or the courts at any stage in an investigation regarding the acts or decisions of those conducting the investigation. Under the same article, an accused person was entitled to the assistance of a lawyer. A suspect who was a minor, was incapable, did not speak the language used by the courts or was charged with a crime carrying a life sentence could not refuse such assistance.

Her delegation fully agreed with Mr. Yakovlev that international terrorism should be regarded as torture. As to whether Georgia was prepared to recognize international jurisdiction, the Georgian Government was in favour of combating international crime by all existing means.

6. The amendments to the Code of Criminal Procedure mentioned by Mr. Yakovlev had been made in 1999. If a lawyer considered that a client's rights had been violated during pre-trial detention, a complaint could be lodged with the prosecutor. If that complaint was rejected, an appeal could be made to the supervising procurator, pursuant to article 89 of the Code of Criminal Procedure. In her annual report for 2000, the Ombudsman had recommended to Parliament that lawyers should be entitled to apply to the courts in order to protect their client's rights at any stage of an investigation or pre-trial detention. She hoped that Parliament would accept that recommendation, as it would be consistent with the Code of Criminal Procedure.

7. In reply to Mr. Mavrommatis she said that under articles 6 and 7 of the Constitution, Georgian legislation had to comply with internationally accepted principles and norms and the State was obligated to protect universally recognized human rights and fundamental freedoms. According to the Law on Normative Acts, international agreements and treaties signed by Georgia automatically became part of Georgian legislation. International norms had been directly applied in five cases heard by the Supreme Court and in one case before the Constitutional Court.

8. With regard to the rules governing the election of the President of Georgia, she said that under article 70 of the Constitution any person who was born in Georgia, was entitled to vote, was over 35, had lived in Georgia for at least 15 years and was living in Georgia on election day could be chosen President. Personally, she felt that that age limit was not discriminatory as the President should have some degree of life experience.

9. Georgia had not yet made any declarations under articles 21 and 22 of the Convention, but would be doing so in the near future.

10. In reply to the questions put by Mr. Mavrommatis and Ms. Gaer concerning Abkhazia and the torture of internally displaced persons in that region, she said that violation of territorial integrity remained a thorny issue for Georgia and was giving rise to many political, economic and social problems. Despite the international community's condemnation of the expulsion by the separatist regime of most of the Georgian population of the region, those expelled had not yet been able to return. Georgia was unable to monitor the human rights situation in the area, although a joint mission of the United Nations and the Organization for Security and Cooperation in Europe (OSCE) had been set up in Sukhumi for that purpose and a similar mission was to be established in Gali district. On the other hand, negotiations were being held between Georgia and Ossetia in the Tskhinvali region, where the situation could be said to have reached the post-conflict stage.

11. Mr. Mavrommatis had wondered how a former high-ranking police officer could become the first Ombudsman of Georgia. The person in question had been appointed by Parliament and had done a good job, but had resigned and been replaced in 2000.

12. In reply to Mr. Mavrommatis' questions about violence against women, domestic violence and trafficking in women, she said that the State Commission for the Formulation of Policies to Advance Women, which she chaired, was responsible for settling gender questions. The Commission drafted presidential decrees on gender issues and monitored their implementation. Women's rights were protected by the Constitution, the Labour Code and the Criminal Code. The Presidential Decree of 28 August 1999 had given various government bodies the task of strengthening the protection of women's human rights. The Ministry of Internal Affairs, which played a key role in crime prevention, had been instructed to collect and process data on violence against women, record instances of domestic violence and carry out preventive measures. Of particular importance was Presidential Decree No. 64/2000 ratifying the Plan of Action to Combat Violence against Women, which sought to study the nature and effects of violence against women, collect data on various forms of violence, develop programmes aimed at potential perpetrators, draft legislation, assist victims of violence, and prevent and eliminate trafficking in women. The Plan was to be implemented by executive and legislative bodies, NGOs and the mass media. Special training courses had been organized for police officers to heighten awareness of gender-related issues, and the police had in fact helped to resolve 1,200 of the 4,000 recorded cases of domestic violence. A special section of the Plan of Action dealt with trafficking in women and had introduced measures aimed at defining all elements of trafficking, reinforcing sanctions, collecting data and facilitating cooperation to eliminate trafficking. Women-Aid-Georgia, an NGO, had launched a multimedia anti-trafficking campaign with the support of State agencies. No cases of obscene telephone calls, telephone sex or female genital mutilation had been reported in Georgia.

13. Mr. Burns and Mr. Mavrommatis had raised the issue of Jehovah's Witnesses. The case of Mr. Mkalavishvili was under investigation and would soon be transferred to the courts. Presidential Decree No. 226 of 22 March 2001 made the Procurator's Office and the Ministries of Internal Affairs and State Security responsible for taking emergency measures to prevent and eradicate religiously motivated crimes. On 30 March 2001 Parliament had adopted a resolution aimed at combating manifestations of religious extremism.

14. Mr. Mavrommatis had asked for an explanation of paragraph 89 of the report. The inmates in "investigation isolation" were persons in pre-trial detention and convicted persons who had been sentenced to imprisonment. He had also raised the matter of compensation. Under article 18 of the Constitution a person who had been unlawfully arrested or detained was entitled to compensation. Article 42 covered compensation for illegal damage caused by the State, government bodies or officials, while chapter 28 of the Code of Criminal Procedure dealt with rehabilitation and compensation for unlawful acts by law enforcement bodies.

15. In response to a further query from Mr. Mavrommatis, she said that evidence given under physical or psychological coercion had no legal force. Indeed, it was a crime punishable by two to eight years of imprisonment to force suspects or witnesses to give evidence.

16. The new Minister of Justice was doing his best to improve the conditions in penitentiaries which Mr. Mavrommatis regarded as a violation of article 16 of the Convention.

17. Replying to Mr. Rasmussen's question about the psychiatric rehabilitation of torture victims, she explained that prison hospitals contained a psychiatric section, and arrested or

detained persons could avail themselves of the psychiatric services of municipal hospitals. In general, convicts had to be given annual medical check-ups, and sick convicts were treated in prison or general hospitals. Mentally ill convicts were held in special mental institutions run by the Ministry of Labour, Health and Social Affairs. A convict suffering from an incurable illness might be released by a court decision. Special training had been organized for prison doctors by the Ministry of Labour, Health and Social Affairs. Suspects were held in "isolators", or pre-trial detention cells, for no more than three days. Such cells were supposed to be equipped with mattresses, blankets and sheets, but sometimes those items were in short supply. The law provided for compensation for damage to health.

18. Ms. Gaer had asked why there were so many disciplinary cases against police officers. That situation might be ascribed to the difficulties experienced in the transition period after 70 years of totalitarian rule. Cases of torture committed by policemen were investigated by the Ministry of Internal Affairs and the Office of the Procurator.

19. In reply to other questions from Ms. Gaer she said that 90 per cent of prisoners in Georgia were Georgian and that there was little sexual violence in prison. The country's economic plight was reflected in conditions in the army, which had led to some violations of human rights. An amnesty law had been passed the previous year, and deserters had been released from prison. Several old people's homes existed in Georgia and conditions in them had slightly improved over the previous two years. The mentally ill were looked after in Georgia's four mental hospitals. Parliament would probably pass a law on advocacy that year.

20. She concurred with Mr. Yu Mengjia that good laws were not always observed. It was hard to build a civil society in a country in transition, but Georgia was trying to do so. The mass media and NGOs were proving to be a great help in achieving that goal.

21. Mr. Burns had requested an explanation of the difference between a suspect and an accused person. Once an investigation had been opened, a person could be accused of an offence only if enough evidence had been assembled to support the charge. That evidence was submitted to the court and the judge decided on that basis whether the person could be accused of the crime. Under article 18, paragraph 5, of the Constitution, a detained or arrested person could immediately request the assistance of a lawyer, and such a request had to be granted. Unfortunately, that constitutional provision was not adequately reflected in the Code of Criminal Procedure, which stipulated in article 83, paragraph 2, that a detained or arrested person had three hours in which to appoint a lawyer, but did not state explicitly that that individual could request the assistance of a lawyer immediately. Suspects could demand to see a doctor after their first interrogation, but it would be desirable for Parliament to consider adopting a law that would entitle them to examination by a doctor as soon as the detention commenced.

22. The deaths from electrocution referred to by Mr. Burns had been caused by prisoners' attempts to improve the lighting in their cells.

23. Lastly, with regard to confessions made by an accused person but not confirmed by other sources, she said that in the wake of unhappy experiences in the Soviet era, when a confession had been regarded as adequate grounds for a conviction, a provision had been included in the Code of Criminal Procedure which stated that unless a confession was backed up by further proof, it would not be deemed sufficient evidence that the accused had committed a crime.

24. Mr. KIPIANI (Georgia), replying to questions concerning pre-trial detention, said that article 18 of the Constitution provided for protection of individual freedoms while article 19 of the Code of Criminal Procedure guaranteed the personal dignity and rights of an accused. The maximum period of detention was 72 hours, but the detainee had to appear in court within 24 hours of being detained, otherwise his release would be ordered. If his detention was subsequently deemed to have been unlawful, he was entitled to full compensation from the State. A person could also be detained if he was thought to pose a threat to an investigation or to a court proceeding.

25. A written record had to be made of any detention upon arrival at the police station, with said record to be signed both by the detainee and by an official representative. If an individual was detained and no charges were brought against him within a reasonable period, that individual was also entitled to compensation from the State. While it was true that some human rights violations had occurred during questioning, charges could only be brought as a result of a court decision; in matters involving security questions, the Supreme Court was responsible for bringing charges. The Criminal Code provided for prison sentences for unlawful detention and arrest, and new legislation relating to the judicial process was being prepared.

26. In response to a question from Mr. Yakovlev regarding legislation in Tblisi to make round-the-clock legal assistance available in the police station, he said that there was currently insufficient funding for that programme, but it was to be hoped that funding would be found in 2002 to ensure that the rights of detainees in the police station were protected. In response to a question from Mr. Mavrommatis on the qualifications of judges, he said that judges must be citizens at least 30 years old. They were appointed for at least 10 years in order to ensure their independence. They were required to have a university education and experience in their speciality, and had to pass an examination that included questions on international instruments ratified by Georgia.

27. In response to a question from Mr. Camara on the role of the procurator, he said that the Procurator's Office fell under the jurisdiction of the Ministry of Justice and was responsible for criminal investigations. Procurators were appointed by the Procurator-General, who was appointed by Parliament upon recommendation of the President for a term of five years. Procurators were independent and, except for the Procurator-General, had to pass qualifying examinations. The procurator could be involved at any stage of an investigation, assign cases to judges and could decide not to press charges, although that decision could be overruled by a court. He noted that a major reform of the procuratorial system was under way.

28. Lastly, in response to a question from Mr. Burns relating to the right to legal representation, he said that the accused and any witnesses should be informed of their rights during questioning. He acknowledged that there were concerns regarding possible abuses during an investigation and the gathering of evidence, but said that efforts were continuing to remedy that situation.

29. Mr. KAVADZE (Georgia), replying to questions on the situation in Abkhazia, recalled that in 1996 the United Nations and OSCE had established a joint mission in Abkhazia for the purpose of promoting human rights, providing technical advice and ensuring the return of internally displaced persons. Unfortunately, given the current security situation, personnel of the United Nations Observer Mission in Georgia (UNOMIG) were unable to move about the conflict

area freely, which had greatly decreased their effectiveness. His Government was of the opinion that UNOMIG should not have its headquarters in Sukhumi, in western Abkhazia, where in any case there was no longer any ethnic Georgian population. The mission should be established in Gali, in eastern Abkhazia where violations were continuing but the Georgian population was afraid to speak out because of fear of reprisals. In that context, he looked forward to the final report of the joint United Nations/OSCE fact-finding mission which had visited the region in November 2000, and which he hoped would contribute to putting an end to genocide, ethnic cleansing and human rights violations.

30. Mr. KAVSADZE (Georgia), speaking in his personal capacity, said that Mr. Mavrommatis seemed to have implied that it was inappropriate for a former police official to be appointed Ombudsman, a view that could be considered discriminatory. Not all police officers were corrupt, and those who had the appropriate legal training and had showed a devotion to the rule of law should not be excluded. Although he himself had been head of police investigations during the Soviet era, following independence he had been appointed Minister for Privatization and had also been involved in the creation of the Ministry of Human Rights and the drafting of legislation relating to the Ombudsman's office. He urged the Committee members to weigh their remarks carefully, since the Committee's recommendations and concerns had a great influence on the State party and were the basis for the preparation of its report.

31. Ms. BERIDZE (Georgia) stressed that the previous speaker had been speaking in his personal capacity; it could hardly be said that the police had been human rights defenders during the Soviet era.

32. Mr. MAVROMMATIS expressed regret that a member of the Georgian delegation had chosen to criticize his remarks in such an unprecedented and personal fashion. He noted that the speaker had stated that he was speaking in his personal capacity, and he thanked the head of the delegation for recalling that fact.

33. Speaking as Country Rapporteur, he thanked the head of the Georgian delegation for her sincere replies. Although they had not addressed all the Committee's concerns, he hoped that the delegation would review the summary records and provide further responses in its next report. He also recognized the difficulty in dealing with the situation in Abkhazia, which was outside the control of the central Government. Overall, however, he was hopeful for the future and felt that the country was on the right track.

34. Mr. YAKOVLEV said it was clear that many reforms were under way but stressed that they must be implemented in practice, in particular instituting the rule of law. The courts must assume their rightful place as a significant part of the justice system and guardians of human rights and justice. He welcomed the delegation's openness and the new, positive attitude towards the role of NGOs. Although he regretted the exchange between one member of the delegation and Mr. Mavrommatis, he pointed out that as circumstances changed, it was possible for individuals who had been involved in the previous regime to take on new and democratic roles and perform them well.

The first part (public) of the meeting rose at 4.25 p.m.